

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 11-O-19373 (11-O-19374;
)	12-O-10031); 12-N-16548 (Cons.)
SALLY ANN REYNOSO,)	
)	DECISION AND ORDER OF
Member No. 185037,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
A Member of the State Bar.)	

In two separate notice of disciplinary charges (NDC), respondent Sally Ann Reynoso (respondent) was charged with willfully (1) failing to perform legal services with competence (two counts); (2) failing to refund unearned fees (three counts); (3) failing to cooperate and participate in a State Bar disciplinary investigation (three counts); and (4) violating California Rules of Court, rule 9.20. Even though respondent had adequate notice of the trial setting in this consolidated proceeding, respondent failed to appear at the trial, and her default was entered. Thereafter, the Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

¹ Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules were amended effective July 1, 2014. However, as respondent's default was entered prior to July 1, 2014, the rules which were in effect at the time respondent's default was entered are the operative rules in this matter.

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that all of the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice of law in California on November 28, 1996, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On August 22, 2012, the State Bar filed and properly served upon respondent by certified mail, return receipt requested, and by first-class mail, a NDC in case Nos. 11-O-19373 (11-O-19374; 12-O-10031). Respondent filed a response to the NDC on September 27, 2012.³

On October 16, 2012, the State Bar filed and properly served upon respondent's counsel by certified mail, return receipt requested, and by first-class mail, a NDC against respondent in case No. 12-N-16548. Respondent filed a response to the NDC on November 8, 2012.

Case Nos. 11-O-19373 (11-O-19374; 12-O-10031) and case No. 12-N-16548 were consolidated on November 8, 2012.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

³ The State Bar's motion for the entry of respondent's default, filed on September 27, 2012, was moot, as respondent filed her answer to the NDC on that day.

Respondent's resignation with disciplinary charges pending was filed on December 7, 2012. Thereafter, the court abated this consolidated matter pending acceptance or rejection of respondent's resignation. The Supreme Court filed an order on September 25, 2013, declining to accept respondent's resignation with disciplinary charges pending. This consolidated matter was thereafter unabated on October 21, 2013.

Respondent's counsel participated in status conferences on October 21 and November 26, 2013. The court thereafter filed status conference orders on October 21 and November 26, 2013, setting this consolidated matter for trial at 9:30 a.m. on January 7 and 8, 2014. Each order was properly served on respondent's counsel by first-class mail, postage prepaid. (Rule 5.81(A).)

On January 7, 2014, the State Bar appeared for trial, but respondent did not. The court entered respondent's default in an order filed on January 7, 2014. The order was properly served upon respondent by certified mail, return receipt requested, to her membership records address and on her counsel by certified mail, return receipt requested. (Rule 5.81(B).) The order notified respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. She has remained inactively enrolled since that time. The order served on respondent was returned as not deliverable as addressed and unable to be forwarded. The order served on respondent's counsel was not returned to the State Bar Court.⁴

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On May 1, 2014, the State Bar filed and properly served upon respondent the petition for

⁴ Respondent's counsel filed a motion to withdraw as counsel for respondent on January 8, 2014. The court granted the motion on January 22, 2014.

disbarment.⁵ As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had any contact with respondent since the order entering her default was served;⁶ (2) there are no other disciplinary matters pending against respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund has made payments related to misconduct by respondent. Respondent did not respond to the petition for disbarment or move to set aside or vacate her default. The case was submitted for decision on June 2, 2014.

Respondent has a prior record of discipline.⁷ Pursuant to an order filed on May 22, 2012, respondent was suspended for three years, the execution of which was stayed, and respondent was placed on probation for three years subject to conditions, including that she be suspended for a minimum of the first two years of probation and until she provides proof to the court of her rehabilitation, fitness to practice and learning and ability in the general law. Respondent stipulated in this matter that she aided a person or entity in the unauthorized practice of law; intentionally, recklessly, and/or repeatedly failed to perform legal services with competence (eight matters); shared legal fees with persons who are not lawyers; formed a partnership with a person who is not a lawyer where at least one of the activities of that partnership consisted of the practice of law; failed to promptly refund any part of a fee paid in advance that has not been earned (seven matters); and deposited or commingled funds belonging to respondent in a bank account designated as a client trust account.

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⁵ The petition for disbarment was served on respondent by certified mail, return receipt requested, to her membership records address. The disbarment petition was also served by regular mail to respondent's former counsel.

⁶ This is the same day respondent's default was entered.

⁷ The court takes judicial notice of the pertinent State Bar court records regarding this prior discipline, admits them into evidence and directs the clerk to include copies in the record of this case.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the consolidated NDCs are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the consolidated NDCs support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

1. Case Number 11-O-19373 (Alvarez Matter)

Count One – respondent willfully violated rule 3-110(A) of the State Bar Rules of Professional Conduct (failing to perform legal services with competence) by intentionally, recklessly or repeatedly failing to perform the legal services for which she was employed by a client and failing to perform any services of value for her client.

Count Two - respondent willfully violated rule 3-700(D)(2) of the State Bar Rules of Professional Conduct (failing to refund unearned fees) by failing to refund any portion of the \$3,000 in unearned advanced fees paid by her client.

Count Three – respondent willfully violated Business and Professions Code section⁸ 6068, subdivision (i) (failing to cooperate and participate in a disciplinary investigation) by failing to provide a written response to allegations regarding respondent's conduct in this matter or otherwise failing to cooperate in the State Bar investigation.

2. Case Number 11-O-19374 (Bordelon Matter)

Count Four – respondent willfully violated rule 3-110(A) of the State Bar Rules of Professional Conduct by intentionally, recklessly or repeatedly failing to obtain a loan modification on her client's behalf or perform any other services of value for her client.

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⁸ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

Count Five - respondent willfully violated rule 3-700(D)(2) of the State Bar Rules of Professional Conduct by failing to refund any portion of the \$3,700 in unearned advanced fees paid by her client.

Count Six – respondent willfully violated section 6068, subdivision (i) by failing to provide a written response to allegations regarding respondent’s conduct in this matter or otherwise failing to cooperate in the State Bar investigation.

3. Case Number 12-O-10031 (Esquivel Matter)

Count Seven - respondent willfully violated rule 3-700(D)(2) of the State Bar Rules of Professional Conduct by failing to refund any portion of the \$2,500 in unearned advanced fees paid by her client.

Count Eight – respondent willfully violated section 6068, subdivision (i) by failing to provide a written response to allegations regarding respondent’s conduct in this matter or otherwise failing to cooperate in the State Bar investigation.

4. Case Number 12-N-16548 (Rule 9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by failing to file a declaration of compliance with California Rules of Court, rule 9.20(c), thereby failing to timely comply with the provisions of the Supreme Court’s May 22, 2012, order requiring compliance with California Rules of Court, rule 9.20.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and respondent’s disbarment is recommended. In particular:

(1) both NDCs were properly served on respondent under rule 5.25;

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(2) respondent had actual notice of this proceeding, as she filed a response to both NDCs, and she also had adequate notice of the trial dates prior to entry of her default, as notice of the trial dates was properly served on respondent's counsel;

(3) the default was properly entered under rule 5.81; and

(4) the factual allegations in the NDCs deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to appear for trial in this consolidated disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Sally Ann Reynoso be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to the following payees:

- (1) Elida Alvarez in the amount of \$3,000 plus 10 percent interest per year from September 22, 2009;
- (2) Adele Bordelon in the amount of \$3,700 plus 10 percent interest per year from February 25, 2010; and
- (3) Maria Esquivel in the amount of \$2,830⁹ plus 10 percent interest per year from January 28, 2011.

Any restitution owed to the Client Security Fund is enforceable as provided in

⁹ This figure represents the amount of the final small claims judgment which respondent's client was awarded against respondent's partnership.

Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Sally Ann Reynoso, State Bar Number 185037, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: September ____, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court